

FILED

FEB - 6 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY *[Signature]* DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

'08 CV 0325 LAB POR
1:08 CV 000190 QXW WWH HC

IN RE: ERIC W. BURTON #F02720
ON PETITION FOR FEDERAL HABEAS CORPUS

Plaintiff,

-VS-
DIRECTOR OF CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION

Defendant.

CASE NO: S152584

MOTION FOR
APPOINTMENT OF COUNSEL
PURSUANT TO 28 USC § 2254
BASED ON MEMORANDUM AND
POINTS OF AUTHORITY

TO: THE HONORABLE COURT IN THE ABOVE CAUSE OF ACTION:

NOW COMES, ERIC WILTON BURTON #F02720 defendant in the
above cause of action who moves this court for an Ex Parte Order for
Appointment of Counsel to represent defendant's interest in the above
bona fide legal action and for which defendant has no other means to
gain meaningful access to the courts due to incarcerated status of
indigent defendant herein.

This motion is based on this Ex Parte Motion, on the att-
ached declaration, on the memorandum of points and authorities hereir
on the papers and records filed in this matter and on such other
evidence presented to the court in support of this motion.

DATED: JAN 30 - 08

RESPECTFULLY SUBMITTED:

[Signature] #F02720
ERIC W. BURTON

DECLARATION

1. That I am the defendant in the within bona fide legal cause of action, am a poor indigent incarcerated prisoner, and have at risk threatened personal and/or property rights as a result of the within cause of action;

2. That declarant is a layperson, untrained in law, and as a result of poor, indigent, and incarcerated status is barred from access to the courts to protect personal and/or property rights as guaranteed by due process and equal protection clauses of both the state and federal constitutions;

3. That declarant is forced to represent self in defense of the within suit, is without funds to employ counsel, and has no legal training, experience, access to legal materials and/or access to the courts necessary to adequately and reasonably protect declarant's present and future personal and/or property rights;

4. That declarant is being harrassed by plaintiff herein in as much as declarant is indigent and incarcerated, unable to retain an attorney, and that without adequate representation and meaningful access to the courts declarant is likely to suffer adverse judgement and therefrom a significant issue of liability would arise impacting declarant's personal and/or property rights both present and in the future;

5. That declarant has been incarcerated since 19 MARCH 192004 ^{Every Day} and will remain incarcerated through approximately INDETERMINATE, 19 ;

6. That as a right guaranteed by the due process and equal protection clauses of the state and federal constitutions declarant has a right to the appointment of legal counsel in the

within cause of action based upon: (a) declarant is confronted with a bona fide legal action threatening personal and/or property interest, (b) declarant is indigent and in prison, (c) declarant plans to defend from the action herein, and (d) adverse judgement would affect declarant's present and/or future property rights;


7. That declarant is entitled to the appointment of counsel and declarant does declare that such appointed counsel should be awarded legal fees in accordance with standards within the community for similar cases;

8. That attorney fees should be ordered by this court to be paid pursuant to, but not limited to, (a) Business and Profession Code, Section 6210, (b) Government Code, Section 27706, and/or (c) legal duty and obligation of law enforcement/correctional agency to provide for the constitutionally mandated needs of wards remanded to custody;

9. That without relief requested herein that declarant will continue to suffer deprivations of constitutional and/or other legal rights as stated above.

VERIFICATION

I have read the above statements and do declare upon penalty of perjury that these statements are true and correct as based upon information and belief. Executed this 30 day of OCTOBER, ²⁰⁰⁸ ~~19~~ 2007 at PO BOX 5246 CI-132L CSATEP, CORCORAN, CA 95212 California pursuant to Code of Civil Procedure, Sections 446 and 2015.5.


ERIC W. BURTON
DECLARANT

MEMORANDUM AND
POINTS OF AUTHORITIES

I

INDIGENT PRISONER WHO FACES BONA FIDE LEGAL ACTION THREATENING INTEREST IS ENTITLED TO ACCESS TO COURTS AS GUARANTEED BY DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTIONS OF CALIFORNIA AND THE UNITED STATES. Yarbrough v. Superior Court, (1985) 39 C.3d 197; Payne v. Superior Court, (1976) 17 C.3d 908.

It is uncontrovertible that defendant herein is imprisoned, is indigent without funds to employ counsel, and faces a bona fide legal action threatening personal and/or property interest by virtue of having to defend from this suit. Further, defendant is acting Pro Per in own defense without adequate training or experience, is without adequate access to legal materials, and is without meaningful and/or viable access to the courts. Woods v. Superior Court, (1974) 36 CA3d 811, Yarbrough v. Superior Court, (supra) 39 c.3d 197.

II

INDIGENT PRISONER WHO IS UNTRAINED AND/OR INEXPERIENCED IN CIVIL LAW SHOULD BE APPOINTED COUNSEL. Payne v. Superior Court, (supra) 17 c.3d 908.

In light of this bona fide legal action threatening defendant's personal and/or property rights, the court must appoint legal counsel in the instant case. Yarbrough v. Superior Court, (supra) 39 C.3d 197, 204.

Before denial of defendant's motion this court must at minimum hold a hearing and/or make factual determination using guidelines set down by the California Supreme Court in Payne. Payne v. Superior Court, (supra) 17 c.3d 908, 924; Yarbrough v. Superior Court, (supra) 39 c.3d 197, 203-204, 207.

/////

THE DECISIONS OF THE SUPREME COURT AND COURT OF APPEAL ARE BINDING AND MUST BE ACCEPTED BY THE TRIAL COURTS. Woods v. Superior Court, (supra) 36 CA 3d 811, 814; Auto Equity Sales, Inc. v. Superior Court, () 57 C.2d 450, 455.

The rule of stare decisis is a rule of jurisdiction. Auto Equity Sales, Inc. v. Superior Court, (supra), citing Abeller v. District Court of Appeal, () 17 C.2d 280, 288.

IV

~~ATTORNEYS FEES SHOULD BE ORDERED PAID BY THIS COURT. 6th, 13th, and 14th Amendments to the United States Constitution.~~

It stands to reason that if defendant is entitled to counsel, that such counsel is entitled to adequate and reasonable compensation equal to that afforded others in the community for similar services. 13th and 14th Amendments to United States constitution; Yarbrough v. Superior Court, (supra) 39 C.3d 197, desent at 207 and continuing be Chief Justice Bird.

This court should order funds be provided from appropriate sources including, but not limited to, provisions pursuant to Business and Professions Code, Section 6210; Government Code, Section 27706; from the law enforcement/correctional agency of custody which is legal mandated to provided for constitutionally required needs of defendant just as food, clothing, shelter, medical and other needs must be provided for. Defendant's legal needs are simply an extension of other constitutionally protected rights which serves both the needs of the individual and society at large. Indeed, for the state to allow personal and/or property rights to be violated, which in this case could have far reaching impact on defendant's future earning and family ties, would transgress the

1 constitutional. Under circumstances as presented herein surely the
 2 state should afford defendant the protection afforded in criminal
 3 proceedings leading to incarceration or the in prison repair of an
 4 ingrown hangnail, contact visitation, mail censorship, or religious
 5 practice.

6 V

7 LEGAL PAPERS SUBMITTED BY INDIGENT PRO PER
 8 PRISONER UNTRAINED IN LAW MUST BE HELD TO
 9 LESS STRIDENT STANDARDS THEN THOSE DRAFTED
 10 BY MEMBERS OF THE BAR AND MUST BE VIEWED IN
 11 LIGHT MOST FAVORABLE TO PRO PER. Haines v.
Kerner, (1972) 404 U.S. 519; 92 s. Ct. 594.

11 CONCLUSION

12 Defendant to this suit is an indigent prisoner who is
 13 untrained in law and being denied meaningful access to the courts.
 14 Defendant has a constitutional right to meaningful access to the
 15 ~~courts and to appointment of legal counsel to protect personal~~
 16 and/or property rights which are threatened by this bona fide legal
 17 action. Defendant further enjoys the right to have legal counsel
 18 ~~compensated by whatever means ordered by this court.~~

19 PRAYER

20 WHEREFORE, Good Cause having been shown, this court should
 21 grant the motion as follows:

- 22 1. declare defendant's rights as to issues raised herein
- 23 2. order appointment of counsel to defend defendant in
- 24 the above cause of action;
- 25 3. order the payment of counsel appointed herein a sum
- 26 customary for such a case within the community to be paid from a
- 27 source determined by the court;
- 28 4. in the alternative, hold hearing(s) and/or otherwise

1 make findings of fact as to issues pertaining to appointment and
2 compensation of counsel to defend defendant in this suit;

3 5. order that all records pertaining to this motion be
4 sealed subject to inspection only upon order of this court after a
5 showing of good cause;

6 6. order such other and further relief as is just, pro-
7 per and equitable.

8 DATED: 10-30-2007

RESPECTFULLY SUBMITTE:

9 Eric W. Burton # F02720
10 ERIC W. BURTON
11 DEFENDANT
12 IN PRO PER
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28